

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DIRECT MARKETING CONCEPTS, INC., et
al,

Defendants

CIVIL ACTION NO. 04-CV 11136GAO

AFFIDAVIT OF TIM CUNNINGHAM

I, TIM CUNNINGHAM, under oath declare as follows:

1. I am the Tape Fulfillment Manager for ITV.
2. My duties as Tape Fulfillment Manager include but are not limited to overseeing tape duplication, as well as supervising the digital video duplication associate in the creation of dubs and view copies.
3. I also work with the media team to prioritize dub requests and fulfill them in-house or send them to an outside vendor and interact with FedEx to ensure that dubs arrive properly.
4. I am responsible for quality control of dubs and masters. I maintain a detailed record of all shows and masters.
5. I am responsible for sending out copies of the Flex Protex advertisement to media stations.
6. The initial version of Flex Protex, Version 1, was only sent out to nineteen stations between the dates of 6.22.05 and 8.1.05. A second version, known as Flex

Protex 1.1, was used to fulfill requests between 8.02.05 and 8.30.05. There were only four masters requested during this time. I understand that Version 1 is the version submitted by the FTC to the Court.

7. All hard copy files of the original 23 requests for versions 1 and 1.1 were cross referenced to our Media 100 program, where each show request is customized with it's own 800 number and printed to tape (beta master). Thirteen of these original tapes were replaced with a Version 1.2 copy in September 2005.

8. The media request team was called concerning the remaining tapes and they informed me that they were not replaced because we were no longer buying media from those media outlets to whom those tapes were sent.

9. From 8.31.05 to the present day, all requests for Flex Protex were made using Version 1.2. I am not aware of any station that is currently airing Version 1 or Version 1.1 of Flex Protex.

10. Attached as Exhibit 1 is a copy of version 1.2 along with a transcript of the advertisement.

Executed this 12th day of October, 2005 in Beverly, Massachusetts.


TIM CUNNINGHAM